

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHARLES WILLIAMS,

Plaintiff,

v.

STATE CORRECTIONS OFFICERS  
ASSOCIATION, et al.,

Defendants.

Civil Action No. 10-19 Erie

**MEMORANDUM ORDER**

This action was received by the Clerk of Court on January 28, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [ECF No. 49], filed on November 18, 2010, recommended that the Motion to Dismiss filed by the Commonwealth Defendants [ECF No. 17] be granted in part and denied in part and that the motion to dismiss filed by the Medical Defendants [ECF No. 18] be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the Commonwealth's motion to dismiss should be:

- Denied on the basis of *res judicata*;
- Granted as to the state law claims on the basis of sovereign immunity;
- Denied as to the Eighth Amendment ETS claims involving contemporaneous injury and granted as to the Eighth Amendment ETS claims involving future injury;
- Granted as to the claim about the denial of a massage therapist and/or chiropractor, but denied as to the remaining Eighth Amendment medical claims;
- Granted as to both the Eighth Amendment claims and the due process claims based upon Plaintiff's confinement in RHU;
- Granted as to the due process claims based upon the confiscation or loss of Plaintiff's personal property;

- Granted as to the access to courts claims - which means that Defendants Vogus, Zarnick, Martin, Heckler, Clayton, Lantz, Bickel and Rozcinski should be terminated from the docket;
- Granted as to the harassment claims;
- Granted as to the Equal Protection claims;
- Denied as to the retaliation claims;
- Denied as to the civil conspiracy claims; and
- Granted as to Defendants Adams, Sobina, Varner and Watson on the basis of respondeat superior.

The Magistrate Judge further recommended that the Medical Defendants' motion to dismiss should be:

- Denied on the basis of *res judicata*;
- Denied on the basis of the *Rooker-Feldman* doctrine;
- Denied as to the Eighth Amendment medical claims;
- Denied as to the civil conspiracy claims;
- Denied as to the retaliation claims; and
- Granted as to the dismissal of the state law negligence claims on the basis of Plaintiff's failure to file a certificate of merit.

The parties were allowed fourteen (14) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants.

Objections were filed by the Plaintiff on December 2, 2010 [ECF No. 54].

Objections were filed by the Commonwealth Defendants on December 14, 2010 [ECF No. 56] and Objections were filed by the Medical Defendants on December 15, 2010 [ECF No. 57].

In their Objections, the Defendants attached documents in support of their *res judicata* and/or *Rooker-Feldman* arguments that were not before the Magistrate Judge. In light of this additional evidence, I remanded this matter to the Magistrate Judge for consideration of this evidence in the first instance on December 22, 2010 [ECF No. 60]. Plaintiff also filed supplemental Objections on January 12, 2011 [ECF No. 63].

On February 24, 2011, the Magistrate Judge filed a Supplemental Report and Recommendation [ECF No. 92], wherein she concluded that the doctrines of *res judicata* and *Rooker-Feldman* did not apply on the current state of the record and consequently, recommended that the motion to dismiss filed by the Commonwealth Defendants [ECF No. 17] be denied and that the motion to dismiss filed by the Medical Defendants [ECF No. 18] be denied. Plaintiff filed a "Response" to the Supplemental Report and Recommendation on March 10, 2010, [ECF No. 94], which the Court has construed as Supplemental Objections. Defendants did not file objections to the Supplemental Report and Recommendation.

AND NOW, this 15<sup>th</sup> day of March, 2011, upon consideration of the Objections and/or Supplemental Objections filed by all parties to the Magistrate Judge's Report and Recommendation [ECF No. 49], and upon consideration of the Supplemental Objections filed by the Plaintiff to the Magistrate Judge's Supplemental Report and Recommendation [ECF No. 92],

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation [ECF No. 49] and Supplemental Report and Recommendation [ECF No. 92] are adopted as the opinion of the Court with one exception. Given the nature of the Plaintiff's allegations relative to his Eighth Amendment ETS claim alleging future injury, the Court is of the opinion that this issue should be addressed on a more fully developed record in conjunction with a motion filed pursuant to Rule 56 of the Federal Rules of Civil Procedure.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge